Claims 1, 7, 14, 20, 27, and 31 are pending in the application.

Claims 1, 7, 14, and 20 are currently amended to satisfy recent changes to the case law, regarding computer-implemented methods. Applicants respectfully submit that no new matter is added to currently amended, independent claims 1, 7, 14, and 20.

Claims 1, 7, 20 and 31 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent Application Publication No. 2002/0013782 to Ostroff et al., hereinafter, Ostroff, in view of U.S. Patent 6,044,354 to Asplen, Jr., hereinafter, Asplen, in further view of U.S. Patent Application Publication No. 2003/0216955 to Miller et al., hereinafter, Miller, and yet further in view of U.S. Patent Application Publication No. 2001/0010041 to Harshaw, and yet further in view of U.S. Patent Application Publication No. 2002/0152110 to Stewart et al., hereinafter, Stewart.

Claims 14 and 27 stand rejected under 35 U.S.C. §103(a) as unpatentable over Ostroff in view of Asplen, in further view of Miller, in yet further view of Harshaw, in yet further view of Stewart, and in yet further view of Principles of Marketing, by Kotler and Armstrong, Eight Edition, Prentice Hall, 1999, hereinafter, Kotler.

Applicants respectfully traverse the rejections based on the following discussion. The following paragraphs are numbered for ease of future reference.

I.   **The Prior Art Rejections**

A.   **The 35 U.S.C. 103(a) Rejection over Ostroff, Asplen, Miller, Harshaw, and Stewart**

1.   **The Ostroff Disclosure**

[0001] It is a fact that Ostroff discloses, "The present invention utilizes an automated software program that will provide comprehensive and continuous monitoring of specific targeted sites, such as an e-tailers competitor's sites. The invention will provide with reports based on automated analysis of the information gathered during the monitoring process. In the case of e-tailers, it will provide information regarding diverse areas of their rival's site including, their pricing, their product catalog, the structure and design of their site and the placement of their site in search engine lists." (paragraph [0022]).

[0002] It is a fact that Ostroff discloses, "The present invention would provide comprehensive daily intelligence reports to on-line retailer, wholesale or portal businesses and government agencies via customized Internet portal web pages and e-mail notification." (paragraph [0023]).

[0003] It is a fact that Ostroff discloses, "The present invention would utilize these reports to provide customized trend analysis reports. The present invention would thus enable e-tailers to determine their rival's primary focus and strategy, and would enable them to answer many important questions regarding their competition." (paragraph [0023]).

[0004] It is a fact that Ostroff discloses, "The present invention would utilize these reports to provide customized trend analysis reports. The present invention would thus enable e-tailers to determine their rival's primary focus and strategy, and would enable them to answer many important questions regarding their competition."

[0005] It is a fact that Ostroff discloses, "It is important that the reports generated utilizing the present invention can compare corresponding items on various sites, e.g., the price of the same item on various competing e-tail sites. Although it may be apparent to an expert human eye that text or other kinds of data on different sites refer to the same item, they are often different enough from each other that they can not be matched with each other as they are by a computer program. Consequently, the site content comparison technician 7 would utilize a content comparator rule generator 8 to provide content standardization rules 9. The content standardization rules specify a set of data transmissions for each site that express the data gathered from that site in a standardized, canonical format. After being transformed using the content standardization rules, all data from all sites are expressed in a standard format and items can be compared by computer program for matches. The content standardization rules 9 are provided by a content comparator rule generator 8 which is a computer software and hardware subsystem that aids technicians to create the content standardization rules for a site quickly and easily, using a graphical interface." (paragraph [0039]).

2. The Asplen Reference

[0006] It is a fact that Asplen discloses, "Referring to FIG. 1A, the program initially presents to a user at station 14, a main menu screen presenting various selections including the
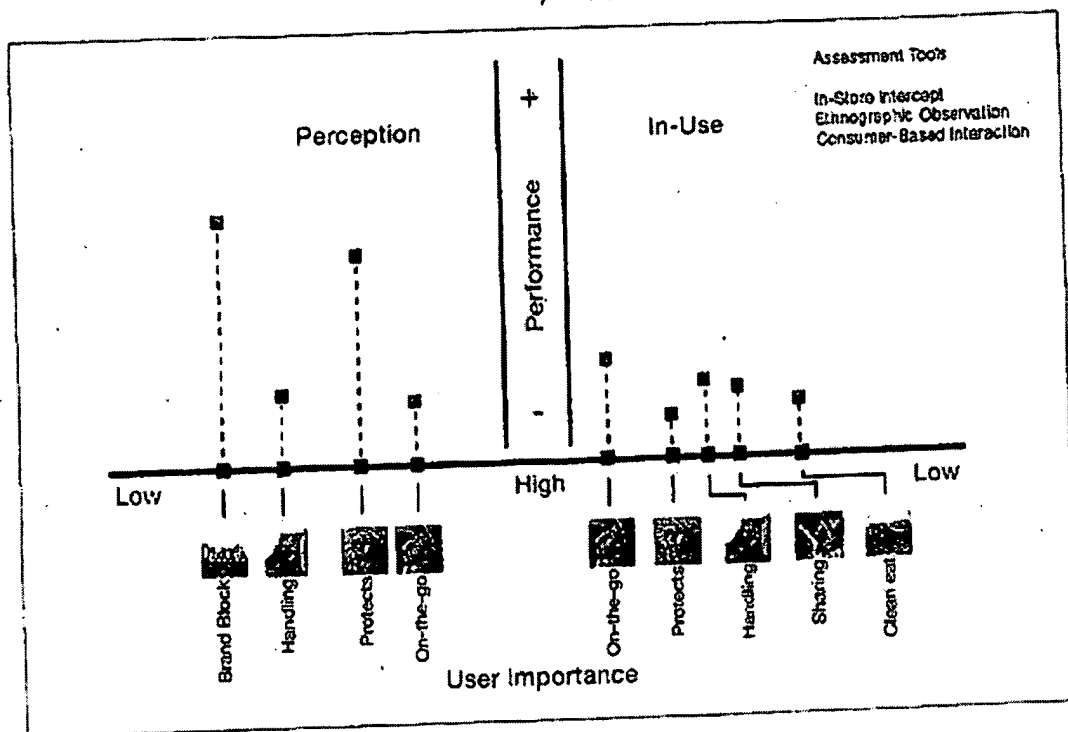
process for entering a new idea for a product or for dealing with an existing product already in the planning process. If the user wishes to enter an idea for a new product, the selection is made and screens are presented prompting the user to enter pertinent information for chapter 1.0 idea managing, section 1.1 new idea. This information is entered by fields and includes the user's identity, such as a name, telephone number, address and department, the current situation, environment or problem that gave rise to the new idea, the idea or solution itself and any information concerning existing products on the market that might solve the problem." (col. 2, lines 45-58).

3. The Miller Disclosure

[0007] It is a fact that Miller discloses, "As noted above, the consumer and competitor input is captured in an analytical tool referred to herein as an attribute map 32 (FIGS. 3-5). Attribute maps 32 are computer-generated charts and graphs that translate market data (consumer 14 and competitor 16) into meaningful information. Data are gathered through the use of several in-market research techniques, such as in-store intercepts, where store environments are analyzed and consumers 14 are interviewed to better understand perceptions of existing products, brands and on-shelf presentation. In addition, contextual observation is used to witness how consumers 14 interact with products in true-to-life usage environments. This technique identifies use problems with existing products, and suggests ways to make products and packaging more satisfying and effective." (paragraph [0043]).
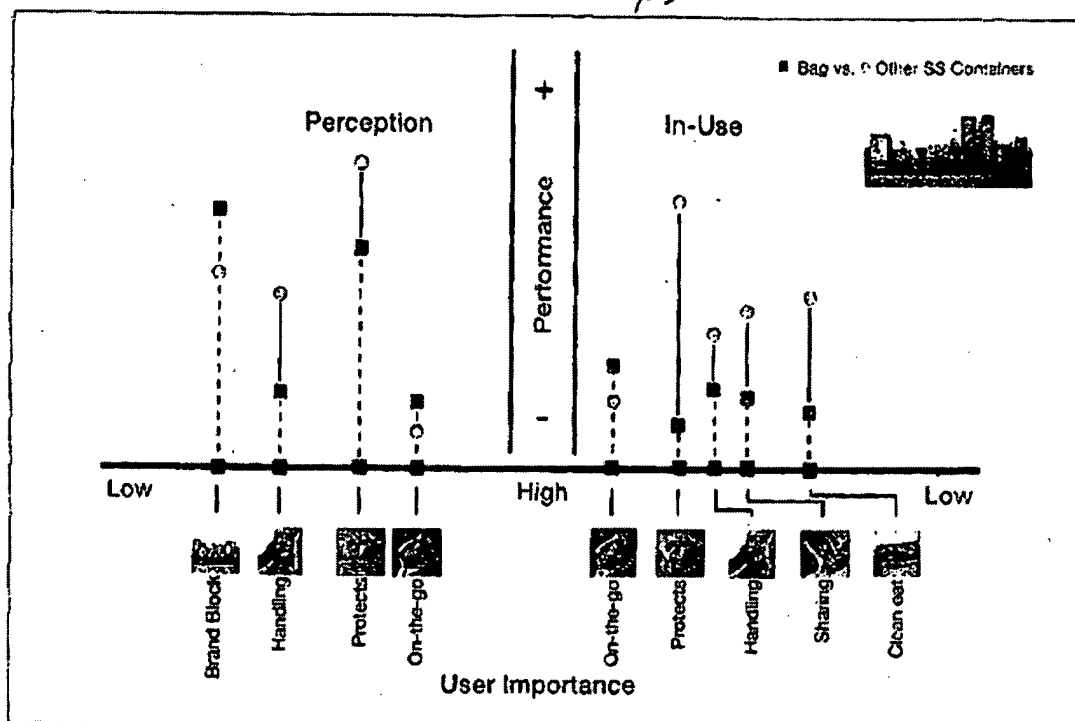
[0008] It is a fact that FIG. 3 of Miller discloses,

~ 32

Figure 3

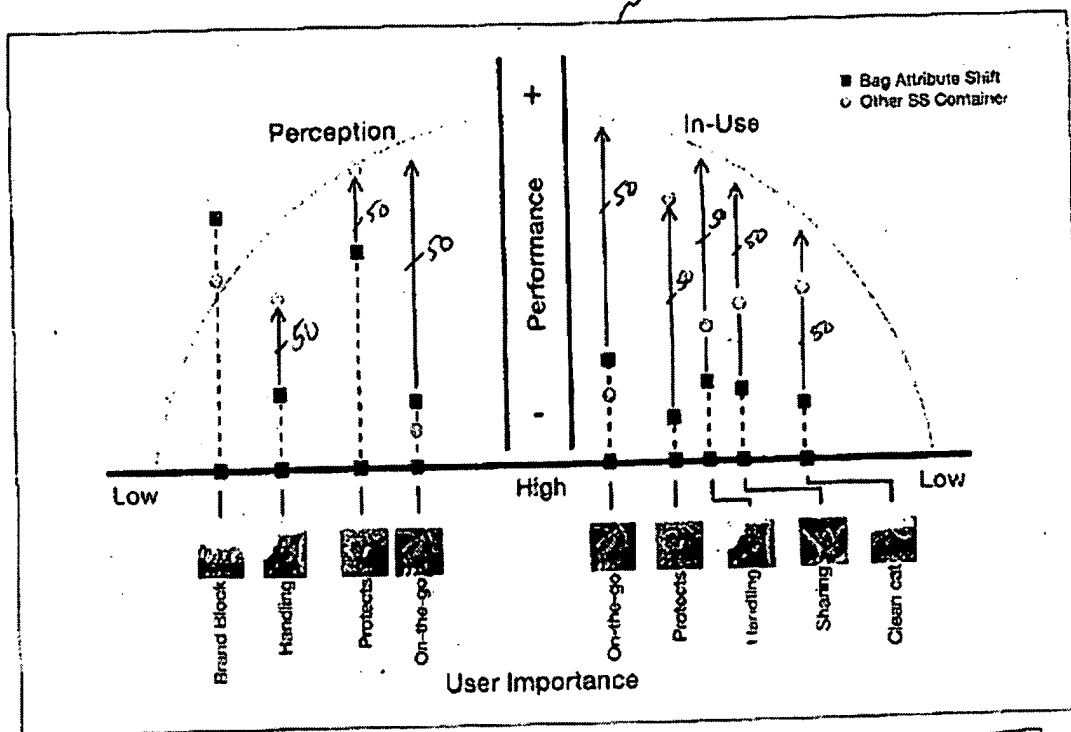Innovation Compass
Attribute Mapping: Consumer

[0009] It is a fact that FIG. 4 of Miller discloses,

~32

Innovation Compass
Attribute Mapping: Competitor

Figure 4

[0010] It is a fact that FIG. 5 of Miller discloses,
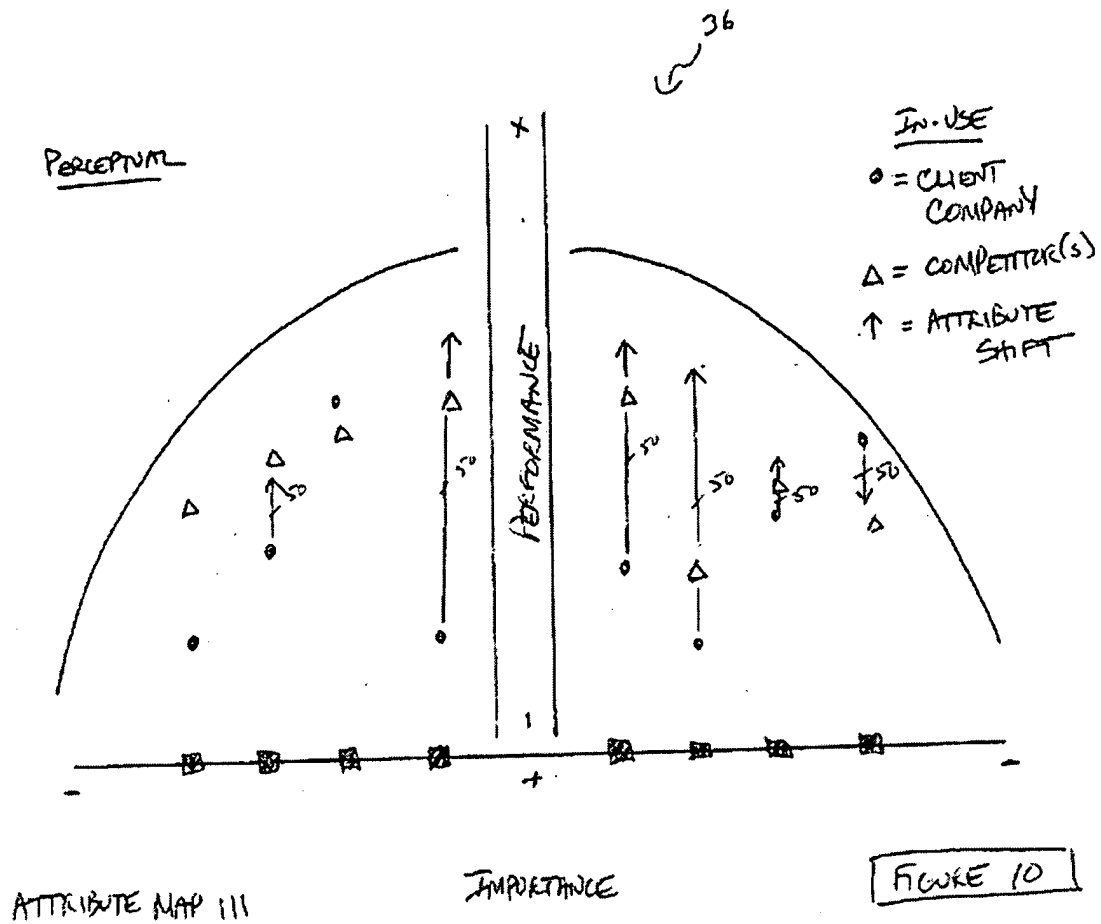
Innovation Compass
Attribute Vectoring

Figure 5

[0011] It is a fact that Miller discloses, "FIG. 5 shows a third attribute map overlay of maps of FIGS. 3 and 4 showing gaps that are desirable to close, illustrated by attribute vectors 50. Attribute vectors 50 show the difference of an attribute with respect to a client 12 product and a desired point on the performance axis. A client 12 product may match or exceed competition and/or consumer 14 expectations for important attributes. In some cases, however, attribute vectors 50 will point in the downward direction, suggesting that performance for a certain attribute should be shifted lower. This may be because the attribute is either not important to the consumer 14, or requires significant resources to deliver desired performance, with little likelihood of realizing comparable return. Desirable shifts in attribute performance, as part of design direction, are preferably represented by upward or downward arrows, depending upon

such factors as cost, importance to consumers, competitive position and the like. By closing the gaps, identified by the attribute vectors 50, between product and product package performance, substitute products and/or consumer expectations, direction is provided for developing product, product packaging and/or services." (paragraph [0049]).

[0012] It is a fact that Miller discloses, "The attribute map 32 shown in FIG. 9 illustrates the performance of competing products with respect to the important attributes represented in attribute map 32. The difference between the performance of the client's 12 product and competing products on each attribute is preferably considered a performance gap." (paragraph [0059]).

[0013] It is a fact that Miller discloses, "In attribute map 32 (FIG. 10) certain gaps are chosen as the basis for the design criteria 40, and represented with attribute vectors 50 indicating the direction of the proposed shift in attribute performance for the client's 12 existing or new product. Performance gaps are chosen for strategic focus based on their size, the importance of the attribute and the cost of attaining that performance shift. Some proposed attribute shifts are upward, in the direction of greater performance. Some proposed attribute shifts are downward, in the direction of lower performance. The latter might be proposed in the case where the client's 12 product is performing far above competition on an attribute that is relatively unimportant to the consumer 14. Here, performance reduction may save cost and provide a less complex message to consumers 14 regarding several less important product benefits." (paragraph [0060]).

[0014] It is a fact that FIG. 10 of Miller discloses,

Figure 10. Attribute Map III — Perceptual. In-Use: ● = CLIENT COMPANY; △ = COMPETITOR(s); ↑ = ATTRIBUTE SHIFT. Axes: PERFORMANCE (vertical), IMPORTANCE (horizontal). Labeled 36.

4. The Harshaw Disclosure

[0015] It is a fact that Harshaw discloses, "Another embodiment of the invention is substantially similar to the method described above except as specifically noted below. In this embodiment, the selection of a new product idea for further development, denoted as R_y in FIG. 2, is accomplished as shown in FIG. 3. First, a market survey 52 employing the methodology of multi-variant analysis is designed for each new product idea submitted to a pool 30. More particularly, each market survey 52 utilizes conjoint analysis, which is a type of multi-variant analysis utilizing statistical fractionalization, to define a quantitative utility value represented in statistical terms for selected attributes associated with a respective new product idea, concept, or invention. A typical conjoint analysis may include five attributes measured at three different

significant levels. For example, a new laptop computer configuration may be represented by the following conjoint analysis:

attribute a - price

level 1 $1,000, level 2=$2,000, level 3=$3,000

attribute b - name

level 1=Toshiba, level 2=Gateway, level 3=IBM

attribute c - peripheral ports

level 1 cd, level 2 cd/floppy drive, level 3 floppy drive

attribute d - colors

level 1 standard neutral, level 2 decorative, level 3 black

attribute e - RAM configuration

level 1 64 MB, level 2 128 MB, level 3 32 MB" (paragraphs [0025]-[0035])".

[0016] It is a fact that Harshaw discloses, "A conjoint analysis market survey 52 for each new product submission within a pool 30 is transmitted electronically to each registrant 36 within that pool 30 and a response thereto is solicited (FIG. 3). Of course, the surveys may be sent in hard copy form as well. In making a response to this solicited market research, registrants 36 rate and rank their preferences of the various combinations of attributes and levels presented, these determinations representing the likelihood of purchasing a product with those respective attributes. When responses from the registrants 36 are returned 54, they may be analyzed electronically according to respective statistical utility function values or by the pool manager such that the best new product idea is selected for further development 60." (paragrapg [0036]).

5.   The Stewart Disclosure

[0017] It is a fact that Stewart discloses, "FIG. 7 illustrates a survey module 50 of one embodiment of the present invention having two single response interactive modules on one Web page that provides for real time feedback to the Participant. This type of module 50 shall be referred to herein as a Single Response, Real Time Feedback module 84. As seen in FIG. 7, a Single Response, Real Time Feedback interactive module 84 allows the Participant to select from a menu of selections 86 that will change the appearance of a graphic or subject 88 upon the selection and de-selection of a menu item 86. Depending on which menu selection 86 is

highlighted, the appearance of the subject 88 will change. Each selection 86 corresponds to a layer that is used to change a characteristic of the subject 88. Thus, upon marking a selection 86, all layers that do not relate to the selection are hidden." (paragraph [0054]).

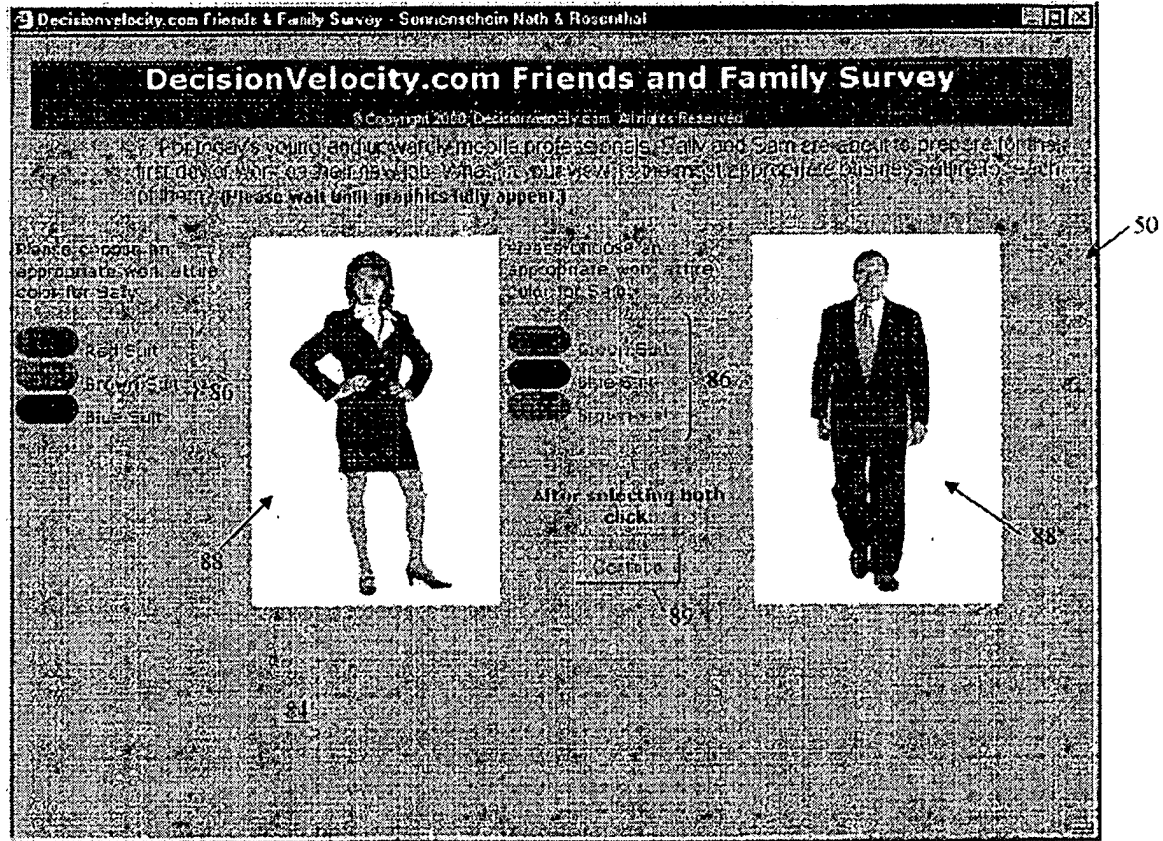[0018] It is a fact that FIG. 7 of Stewart discloses,

FIG. 7

6. Argument

[0019] Applicants respectfully submit that Ostroff does not disclose, teach or suggest at least the present invention's features of: wherein said merchant's data comprises ... a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business

objective; conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 7, and 20, and as described in previously presented claim 31.

[0020] Instead, Ostroff merely discloses monitoring competitors' web sites for changes in pricing and products, in which a site content comparison technician would utilize a content comparator rule generator 8 to provide content standardization rule. (Ostroff, [0039]).

[0021] Thus, it is Ostroff's site content comparison <u>technician</u> that is performing the computer-implemented functions of forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; and conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data and conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis. (emphasis added).

[0022] Furthermore, nowhere does Ostroff disclose, teach or suggest the merchant's business data comprising a business objective further comprising maximization of any of revenue, profit, and unit sales, as described in currently amended, independent claims 1, 7, and 20, and as described in previously presented claim 31. ..

[0023] In addition, Applicants respectfully submit that Asplen also does not disclose, teach or suggest at least the present invention's features of: wherein said merchant's data comprises ... a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 7, and 20, and as described in previously presented claim 31.

[0024] Instead, Asplen merely discloses a program for a user to enter an idea for a new

product or an existing product in a planning process in which the program initially presents to a user various selections including the process for entering a new idea for a product or for dealing with an existing product already in the planning process. (col. 2, lines 45-58).

[0025] Furthermore, Applicants respectfully submit that Miller also does not disclose, teach or suggest at least the present invention's features of: wherein said merchant's data comprises ... a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 7, and 20, and as described in previously presented claim 31.

[0026] Instead, Miller merely discloses attribute maps, which are computer generated charts and graphs that represent consumer and competitor product attributes qualitatively arranged along perceptual/importance axes; for example, FIG. 5 of Miller shows an attribute map overlay of maps of FIGS. 3 and 4 showing gaps that are desirable to close, illustrated by attribute vectors 50 in which attribute vectors 50 show the difference of an attribute with respect to a client 12 product and a desired point on the performance axis. (paragraph [0049]).

[0027] Furthermore, Applicants respectfully submit that Harshaw also does not disclose, teach or suggest at least the present invention's features of: wherein said merchant's data comprises ... a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 7, and 20, and as described in previously presented claim 31.

[0028] Instead Harshaw merely discloses that a market survey utilizes conjoint analysis,

which is a type of multi-variant analysis utilizing statistical fractionalization, to define a quantitative utility value represented in statistical terms for selected attributes associated with a respective new product idea, concept, or invention. (Harshaw, [0025]).

[0029] Nowhere does Harshaw disclose, teach or suggest at least the present invention's features of: "forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective". Nowhere does Harshow disclose, teach or suggest using a metric, which factors in a business objective, as described in currently amended, independent claims 1, 7, and 20, and as described in previously presented claim 31.

[0030] Finally, Applicants respectfully submit that Stewart also does not disclose, teach or suggest at least the present invention's features of: wherein said merchant's data comprises ... a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 1, 7, and 20, and as described in previously presented claim 31.

[0031] Instead, Stewart merely discloses a method for collecting marketing research data from an on-line survey, which presents pre-determined stimuli to participants, in which a survey module 50 has two single response interactive modules on one Web page that provides for real time feedback to the Participant. (Stewart, [0054]).

[0032] For at least the reasons outlined above, Applicants respectfully submit that Ostroff, Asplen, Miller, Harshaw and Stewart, either individually or in combination, do not disclose, teach or suggest at least the present invention's features of: "said merchant's data comprises ... a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; ... identifying a shortlist of product attributes and positioning

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attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in currently amended, independent claims 1, 7, and 20; and "a processor configured to: ... process said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identify a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conduct conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conduct online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in previously presented, independent claims 31. Accordingly, Ostroff, Asplen, Miller, Harshw and Stewart, either individually or in combination, fail to render obvious the subject matter of currently amended, independent claims 1, 7, 20, and 31 under 35 U.S.C. §103(a). Withdrawal of the rejection of claims 1, 7, 20, and 31 under 35 U.S.C. §103(a) as unpatentable over Ostroff, Asplen, Miller, Harshaw and Stewart is respectfully solicited.

B.   The 35 U.S.C. 103(a) Rejection over Ostroff, Asplen, Miller, Harshaw, Stewart, and Kotler

1.   The Kotler Disclosure

[0033] Kotler discloses that the marketing mix consists of everything the firm can do to influence the demand of its product. The many possibilities can be collected into four groups of variables known as the "four Ps": product, price, place, and promotion. (page 49, lines 2-4).

2.   Argument

[0034] Kotler merely discloses that the marketing mix consists of everything the firm can do to influence the demand of its product. The many possibilities can be collected into four groups of variables known as the "four Ps": product, price, place, and promotion. (page 49, lines 2-4).

[0035] Applicants respectfully submit that Kotler does not cure the deficiencies of Ostroff, Asplen, Miller, Harshaw, and Stewart argued above.

[0036] Applicants respectfully submit that Kotler also does not disclose, teach or suggest at least the present invention's features of: wherein said merchant's data comprises ... a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; forming of clusters based on the values of product and positioning attributes of a shortlist of the competitors' products and using a distance metric that factors in a business objective; conducting a conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; and conducting online market research to obtain further competitors' data sufficient to completely analyze the clusters by conjoint data analysis, as described in currently amended, independent claims 14 and 27.

[0037] Instead, Kotler merely discloses a definition of a marketing mix. (page 49, lines 2-4).

[0038] For at least the reasons outlined above with respect to the rejection of the claims over AOstroff, Asplem, Miller, Harshw, and Stewart, and for at least the reasons outlined immediately above with respect to the rejection of the claims over Kotler, Applicants respectfully submit that that Ostroff, Asplen, Miller, Harshaw, Stewart and Kotler, either

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individually or in combination, do not disclose, teach or suggest at least the present invention's features of: "said merchant's data comprises ... a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; ... identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in currently amended, independent claim 14; and "a processor configured to: ... process said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identify a shortlist of product attributes and positioning attributes based on the filtered competitors' data, ... wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and conduct conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conduct online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis", as recited in previously presented, independent claim 27. Accordingly, Ostroff, Asplen, Miller, Harshw, Stewart and Kotler, either individually or in combination, fail to render obvious the subject matter of currently amended, independent claims 14 and 27 under 35 U.S.C. §103(a). Withdrawal of the rejection of claims 14 and 17 under 35 U.S.C. §103(a) as unpatentable over Ostroff, Asplen, Miller, Harshaw, Stewart and Kotler is respectfully solicited.

II.   Formal Matters and Conclusion

Claims 1, 7, 14, 20, 27 and 31 are pending in the application.

With respect to the rejections of the claims over the cited prior art, Applicants respectfully argue that the present claims are distinguishable over the prior art of record. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections to the claims.

In view of the foregoing, Applicants submit that claims 1, 7, 14, 20, 27 and 31, all the claims presently pending in the application, are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest time possible.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary.

Please charge any deficiencies and credit any overpayments to Attorney's Deposit Account Number 09-0441.

Respectfully submitted,

Dated: March 27, 2009

/Peter A. Balnave/
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